

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-208869

**DATE:** October 13, 1982

**MATTER OF:** National Fence Builders, Inc.

**DIGEST:**

Protest against the award of contracts to firm closely associated with other firms which have filed for bankruptcy is dismissed because it relates to a procuring official's affirmative determination of responsibility which GAO does not review where, as here, the protester fails to show fraud or that the solicitation contains definitive responsibility criteria which were not applied.

National Fence Builders, Inc. (NFB), protests the award of two contracts by Patrick Air Force Base, Florida, under invitations for bids Nos. F08650-82-B-0147 and F08650-82-B-0175, to Sharp Fence (Sharp). NFB alleges that Sharp is closely associated with several firms which have recently filed for bankruptcy, and that key personnel and facilities are common to those firms. Therefore, NFB questions the Air Force awards to Sharp.

NFB's protests concern the ability of Sharp to perform the contracts which relates to responsibility. Procuring officials determine the responsibility of bidders prior to award. Our Office does not review protests against affirmative determinations of responsibility unless the protester shows either fraud on the part of the procuring officials or that the solicitation contained definitive responsibility criteria which allegedly have not been applied. Arlington Electrical Construction Co., B-203429, July 2, 1981, 81-2 CPD 5. The protester has not shown that either exception is applicable here.

We point out, however, that the mere fact that a contractor files a petition in bankruptcy does not require a finding of nonresponsibility. Domar Industries, B-202735, September 4, 1981, 81-2 CPD 199.

Accordingly, the protest is dismissed.

*for* *F. H. Barclay, Jr.*  
Harry R. Van Cleve  
Acting General Counsel